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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 967 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? Yes. Copy be sent to W.A. Uraizee, then  
Asst. Judge at Porbandar but now  
where he is posted.

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GSRTC

Versus

BHIMA POPAT ANTROLIA

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Appearance:

MR YS LAKHANI for Petitioner

MR JR NANAVALI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 05/09/97

ORAL JUDGEMENT

1. The present Civil Revision Application is filed by the Gujarat State Road Transport Corporation on being aggrieved by the judgment and order passed by Assistant Judge, Porbandar on 10th of August, 1994 in Civil Misc.

Appeal No. 48 of 1994 whereby the Assistant Judge at Porbandar allowed the appeal and quashed and set aside the order which was passed by Civil Judge, Senior Division, Porbandar on 30th June, 1994 below Exhibit 6 in Regular Civil Suit No. 164 of 1994. The resultant effect of the order passed by the Assistant Judge at Porbandar is that the plaintiff - respondent herein who was simply transferred from Junagadh Division to Palanpur Division on administrative grounds is permitted to work at Palanpur Division. The respondent - plaintiff Bhima Popat was serving as Driver at Porbandar Depot in Gujarat State Road Transport Corporation and he came to be transferred from Porbandar Division to Palanpur Division on administrative grounds. Being aggrieved by such order, he filed Regular Civil Suit No. 164 of 1994 in the Court of Civil Judge, Senior Division, Porbandar and applied for temporary injunction. The application was decided by Civil Judge, Senior Division, Porbandar by his order dated 30th June, 1994, whereby he vacated the ex parte order of injunction and dismissed the application for injunction at Exhibit - 6. The order was passed by Civil Judge, Senior Division, Porbandar on 30th June, 1994. In the said judgment and order, the trial court, prima facie, found that the order passed by the Corporation was just and proper and was absolutely necessary on administrative grounds. The reliance which was placed by the respondent plaintiff on the earlier proceeding being proceeding of Regular Civil Suit No. 340 of 1988 and Regular Civil Appeal No. 9 of 1992 was not given any importance. His contention that he was transferred out of one division to another division, namely, from Porbandar Division to Palanpur Division which was not permissible was considered by the trial court and negatived by the trial court on the ground that the contention that an employee cannot be transferred from one division to another division under Gujarat State Road Transport Employees Service Regulation, the trial court found that under Regulation 49 there is power in the Corporation to transfer an employee at any place within the state of Gujarat. The trial court also found that in a State Road Transport Corporation which provides facility of transfer all over the State for the purpose of running the smooth administration thereof, if transfer of an employee from one division to another division becomes absolutely necessary, employee cannot refuse to carry out the order of transfer. The employee cannot compel the Corporation to permit him to perform service at a particular place more so when the conduct of the employee was such which made expedient for the Corporation to transfer an employee from one division to another division in the interest of administration. The

reliance which was placed by the Corporation on the earlier Regular Civil Suit filed by the employee being Regular Civil Suit No. 44 of 1994 in the court of Civil Judge, Junior Division, Porbandar, wherein he applied for injunction against his apprehended transfer, the court rejected the application for injunction against which the employee preferred Civil Misc. Appeal No. 19 of 1994 in the Court of Assistant Judge, Porbandar, which also came to be rejected and this fact was suppressed by the plaintiff and such act of the plaintiff which amounted to fraud as it was an act of suppressio varie committed by the employee while filing subsequent suit and obtaining injunction against his transfer assumes importance. It was also pointed out that the order cannot be said to be an order of stay not assailable as not passed in good faith because the order was passed by the Central Office of S.T. Corporation of Ahmedabad and no allegation is made against such officer or officer of the Central Office at Ahmedabad. The trial court also found that by simply making allegations of mala fide against the employer, the action of the employer does not become mala fide unless by specific allegations and averments made the lack of good faith is established. In fact, it was found by the trial court that very serious allegations were made against the respondent plaintiff as when an attempt was made by a checking party to stop the bus which was being plied by the plaintiff on 29th January, 1994 on Somanath Porbandar route, the respondent plaintiff did not stop the bus but drove the bus at the fastest possible speed and tried to escape from the liability. With a view to seeing that placing such employee under suspension would encourage the employee to draw the salary without rendering any service and to unduly prolong the enquiry, the Gujarat State Road Transport Corporation decided in the interest of administration that he should be transferred out of the Division i.e. from Porbandar Division to Palanpur Division. Such an order of transfer was purely an administrative order of transfer and cannot be said to be one which is passed in bad faith or mala fide exercise of power or with a view to harass the employee. The trial court also noticed that the employee first instituted the suit in the Junior Division Court and obtained injunction and when he failed to obtain injunction from the Junior Division court, having suppressed that fact, he filed the suit in the court of Civil Judge, Senior Division at Porbandar. The court also found that not only that the employee has failed to establish the prima face case but the transfer of the employee from out of Porbandar Division was absolutely essential and the balance of convenience was also in favour of the employer and that

if such an order of transfer is not permitted to be implemented, irreparable loss might be caused to the Corporation which cannot be compensated in terms of money. On all the three grounds, the trial court vacated the ad interim injunction.

2. The employee thereupon preferred Civil Misc. Appeal No. 48 of 1994 in the court of Assistant Judge at Porbandar, who by judgment and order dated 10th of August, 1994, allowed the appeal and quashed and set aside the just, legal and proper order passed by the trial court thereby exhibiting his ignorance that an order of transfer ordinarily is an administrative order and the Civil Court has no jurisdiction to interfere with the order and that when an order of transfer is passed in the interest of administration, the Civil Court should be loath to interfere with the order of transfer. This is the well established principle of law by the Apex Court in the case of SHANTI KUMARI v. REGIONAL DEPUTY DIRECT, HEALTH SERVICES, PATNA DIVISION, reported in AIR 1981 SC 1577.

3. The exhibition of ignorance of the settled position of law on the part of the Assistant Judge, Porbandar, would have in the ordinary circumstances compelled this court to make some adverse order against him, but no serious view of the matter is taken in this case and it is only observed that the judgment and order passed by him on 10th of August, 1994 in Civil Misc. Appeal deserves to be denounced and deprecated in the harshest possible words and the same are required to be quashed and set aside and the wisdom shown by the trial court by refusing the order of injunction is required to be appreciated and the order of the trial court is required to be restored.

4. In the result, the Civil Revision Application No. 967 of 1994 succeeds. The judgment and order of the lower appellate court is quashed and set aside and that of the trial court is restored. Rule is made absolute. There shall be no order as to costs.

pnn

Date: 17th September 97

ORAL ORDER AT THE REQUEST OF THE PARTIES

Today Mr. J.R. Nanavati, learned Counsel appearing for respondent requested the court that the respondent intends to prefer SLP against the judgment and

order of this Court and, therefore, stay of the judgment and order of this Court should be extended for some reasonable time. I have heard both Mr. Y.S. Lakhani and Mr. J.R. Nanavati and on the condition that the status quo prevails as it was prevailing on the day the order was passed by this Court, stay of the order of this court is granted upto 5.11.1997.

Date: 17.09.1997 (S.D.Shah, J.)

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